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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

W. MICHAEL WRIGHT,

Petitioner,

vs.

MURIEL KAY HEIMER,
as President of Lake City
Community College,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT OF FLORIDA**

PETITION FOR WRIT OF CERTIORARI

William J. Sheppard
Counsel of Record
D. Gray Thomas
SHEPPARD & WHITE, P.A.
215 Washington Street
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(904) 356-9661
ATTORNEY FOR PETITIONER

March 7, 1995

QUESTIONS PRESENTED FOR REVIEW

The questions presented by this petition are:

1. Has this Court overruled Tumey v. Ohio, 273 U.S. 510 (1927); In Re Murchison, 349 U.S. 133 (1955); Ward v. Village of Monroeville, 409 U.S. 57 (1972); Gibson v. Berryhill, 411 U.S. 564 (1973); and Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986), which hold that judicial and administrative adjudicators with substantial pecuniary interests in legal proceedings should be disqualified from adjudicating potentially determinative proceedings?

2. Where a public community college faculty member has previously brought suit on First Amendment and other grounds seeking individual pecuniary liability against members of the college board of trustees prior to initiation or notice of termination proceedings against the faculty member, does

the Due Process Clause of the Fourteenth Amendment to the United States Constitution disqualify such board members from serving as hearing officers or adjudicators in a subsequent termination proceeding?

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No. 95-_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

W. MICHAEL WRIGHT,

Petitioner,

vs.

MURIEL KAY HEIMER,
as President of Lake City
Community College,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT OF FLORIDA**

PETITION FOR WRIT OF CERTIORARI

The petitioner, W. Michael Wright, respectfully prays that a Writ of Certiorari issue to review the opinion and judgment of the District Court of Appeal for the First District of Florida entered in this action on December 7, 1994.

OPINIONS BELOW

The opinion of the Court of Appeal for the First District of Florida was released as a slip opinion, W. Michael Wright v. In the Matter of: President's Recommendation for Dismissal of W. Michael Wright from Employment at Lake City Community College, Case No. 93-1536 (Fla. Dist. Ct. App. December 7, 1994), and is reproduced in the Appendix at page 1a. The administrative order of the District Board of Trustees of Lake City Community College, entered May 10, 1993, In the Matter of: President's Recommendation for Dismissal of W. Michael Wright from Employment at Lake City Community College, Muriel Kay Heimer, as President of Lake City Community College v. W. Michael Wright, is reproduced in the Appendix at pages 2a through 17a.

JURISDICTION

The per curiam affirmance of the administrative order in this case was rendered on December 7, 1994. The judgment of the District Court of Appeal for the First District of Florida is that of the highest state court in which decision can be had in that Florida law renders such decision final and non-reviewable by the Supreme Court of Florida. Williams v. Taylor, 399 U.S. 78, 80 n.5 (1970); Fla.R.App.P. 9.030(a). This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case requires interpretation and application of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which provides, "No state shall... deprive any person of life, liberty, or property, without due process of law...."

STATEMENT OF THE CASE

This action was initiated by the respondent on March 20, 1992, by the filing of a written recommendation for termination of the employment of petitioner W. Michael Wright and cancellation of his continuing contract as an instructor at Lake City Community College. On March 10, 1992, prior to notice or initiation of such termination proceedings, Mr. Wright, the petitioner herein, and three former instructors at Lake City Community College had filed a complaint in the United States District Court for the Middle District of Florida, alleging violations of their rights under the First and Fourteenth Amendments to the United States Constitution. See, Appendix, pages 22a through 40a.

Mr. Wright and the other plaintiffs in the Middle District of Florida action sought, inter alia, pecuniary damages personally against individual members of the

District Board of Trustees of Lake City Community College and other officials of the College, including the respondent herein, Muriel Kay Heimer, President of the College. Mr. Wright brought a subsequent action on the same grounds, specifically related to the termination proceedings, which was consolidated with the first lawsuit, and those cases presently are before the United States Court of Appeals for the Eleventh Circuit on interlocutory appeal as to certain immunity issues. Lake City Community College v. Wright, Docket No. 94-2841 (11th Cir.).

During the course of proceedings before the District Board of Trustees and a Board member serving as hearing officer, petitioner Wright moved on March 8, 1993, that the members of the District Board of Trustees of Lake City Community College be disqualified from the proceedings below based on their status as defendants in Mr.

Wright's federal civil rights action. Appendix, pages 18a through 21a. In his motion, Mr. Wright specifically raised the federal question sought to be reviewed in this Court based on the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In response to petitioner's motion, "Each individual member of the Board of Trustees with the exception of Frank Gafford who reserved ruling on his personal disqualification, stated on the record that they would not disqualify themselves concerning this matter." Appendix, page 6a. The Board of Trustees further denied petitioner's exceptions to the recommended order of the hearing officer, himself a member of the District Board of Trustees, with regard to the issues of disqualification of the hearing officer and of the members of the Board of Trustees. Appendix, pages 7a-8a. Board of Trustees

member Frank Gafford subsequently did disqualify himself in the matter. Appendix, pages 15a. The District Board of Trustees, through its Chairman, entered its order dismissing Mr. Wright from employment and cancelling his continuing contract with Lake City Community College on May 10, 1993. Appendix, pages 2a-17a.

Petitioner Wright further specifically raised the federal due process question sought to be reviewed herein in the District Court of Appeal for the First District of Florida. In his initial brief in the Florida appellate court, filed on or about September 15, 1993, Mr. Wright, after citing the pending federal lawsuit seeking, inter alia, money damages against individual members of the Board of Trustees, argued:

> Due process rights are violated where one is denied a fair and impartial hearing. Gibson v. Berryhill, 411 U.S. 564 (1973). In Gibson, optometrists brought a civil rights action against the Alabama Board of Optometry seeking

> to enjoin the board from hearing license revocation proceedings against them. Id. at 569-570. The federal district court held that the board was biased, in part, because the board members had previously sued the optometrists and had a personal financial stake in the matter should the plaintiff optometrists be delicensed. Id. at 571. The Supreme Court affirmed, holding that those with a substantial pecuniary interest in legal proceedings should not adjudicate those disputes. Id. at 579.
>
> In the instant case, the board members and hearing officer had a substantial pecuniary interest. The respondent had brought two federal cases against members of the board of trustees in their official as well as their individual capacities. [R. 503-513, 514-524]. Thus, any judgment against them would have to be paid at least partly by them individually. In an effort to combat the federal claims, and avoid paying an adverse judgment, the board has terminated the respondent in the instant case.

Despite the foregoing, the District Court of Appeal of the First District of Florida affirmed without analysis or rationale. Appendix, page 1a.

REASONS WHY THE WRIT SHOULD BE GRANTED

The judgment of the District Court of Appeal for the First District of Florida, and the underlying administrative order of the District Board of Trustees of Lake City Community College, directly contravene and flout numerous clear, prior holdings of this Court. The affirmance without elaboration by the court below utterly ignores the due process jurisprudence of this Court. Review in this Court is the only manner in which the gross constitutional error below may be corrected.

In Tumey v. Ohio, 273 U.S. 510 (1927), this Court found that "it certainly violates the Fourteenth Amendment...to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." Id. at 523. As this

Court further has held:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.

In Re Murchison, 349 U.S. 133, 136 (1955). These principles have continued to be reaffirmed by this Court.

Administrative adjudicators members of a licensing board, have been held disqualified from license revocation proceedings where the members had previously sued the licensees under consideration and had a personal financial stake in the licensing or de-licensing issue. Gibson v. Berryhill, 411 U.S. 564 (1973). Such a financial interest precluding quasi-judicial administrators from adjudicating certain disputes "need not be as direct or positive"

as the financial interests discussed in Tumey, supra. Id. at 579. Even a state Supreme Court Justice is not beyond the reach of this doctrine. Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986).

The circumstances presented in this case compel review by this Court in light of the clear commands of this Court's due process jurisprudence. The petitioner herein, and others, initiated a federal civil rights action seeking, inter alia, monetary damages personally against individual members of the District Board of Trustees of Lake City Community College, the College's president and others. Ten days later, the College president, the respondent herein, initiated termination proceedings against the petitioner. Such proceedings were had before the District Board of Trustees and a board member serving as hearing officer.

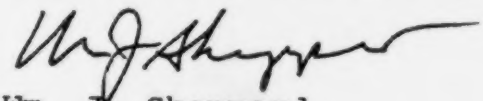
Despite motions by the petitioner for disqualification of the hearing officer and other members of the District Board of Trustees, including on Fourteenth Amendment grounds, the members of the District Board of Trustees individually and collectively refused to disqualify themselves from the proceedings, except, ultimately, a single board member, Frank Gafford. At the conclusion of such proceedings, the District Board of Trustees, through its chairman, dismissed the petitioner from employment and cancelled his continuing contract as a college instructor.

The affirmance without elaboration by the District Court of Appeal for the First District of Florida ignores the clear due process holdings of this Court. Review in this Court is necessary to correct the blatant violation of the petitioner's due process rights in the proceedings below.

CONCLUSION

For the reasons given above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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March 7, 1995

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

W. MICHAEL WRIGHT,

Petitioner,

v.

MURIEL KAY HEIMER, as President
of LAKE CITY COMMUNITY COLLEGE,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FOR THE FIRST DISTRICT OF FLORIDA

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ATTORNEYS FOR PETITIONER

March 7, 1995

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

W. MICHAEL WRIGHT,

Appellant,

v.

IN THE MATTER OF:

PRESIDENT'S RECOMMENDATION FOR DISMISSAL OF W. MICHAEL WRIGHT FROM EMPLOYMENT AT LAKE CITY COMMUNITY COLLEGE,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARINGS AND DISPOSITION THEREOF IF FILED.
CASE NO. 93-1536

Opinion filed December 7, 1994.

An appeal from an order of the Board of Trustees of Lake City Community College. Don Bennik, Judge.

Wm. J. Sheppard and D. Gray Thomas of Sheppard and White, P.A., Jacksonville, for Appellant.

Jesse S. Hogg of Hogg, Allen, Norton & Blue, P.A., Coral Gables, for Appellee.

PER CURIAM.

AFFIRMED.

WOLF, WEBSTER and MICKLE, JJ., CONCUR.

BEFORE THE
DISTRICT BOARD OF TRUSTEES
LAKE CITY COMMUNITY COLLEGE

IN THE MATTER OF:

President's Recommendation For Dismissal of W. Michael Wright From Employment At Lake City Community College

MURIEL KAY HEIMER, as President of Lake City Community College,

Petitioner,

v.

W. MICHAEL WRIGHT,

Respondent.

ORDER

THIS is a formal administrative proceeding, and conducted under the provisions of Chapter 120, Florida Statutes, Section 120.57(1), on petition filed by Dr. MURIEL KAY HEIMER as President of Lake City Community Cc1lege, requesting and recommending to the District Board of Trustee (hereinafter the "Board"), the

termination of the Respondent's, W. MICHAEL WRIGHT, employment as an instructor at the College and the cancellation of his continuing contract, all to be effective as of the end of the last day of Respondent's contracted employment during the 1991-1992 College year.

On March 20, 1992, and in accordance with Florida Administrative Code, Rule 68-14.0411(4), Dr. Heimer filed with the Board her written recommendation for the Respondent's dismissal.

The Board, at its regular meeting of May 12, 1992, voted to consider the charges and directed Dr. Heimer to file the appropriate petition. At the same meeting the Board voted to designate Board Chairman, Donald T. Bennink to act as Hearing Officer in this matter, in the event that Respondent should request a hearing, with Trustees,

Thomas Varnes and Louis Williams to be available as alternate Hearing Officers.

President Heimer proceeded on May 27, 1992 to file her petition with the Board, serving a copy of the petition, together with a Notice of his Hearing Rights, upon the Respondent.

On June 4, 1992, the Respondent by counsel filed his request for a public hearing, the request was granted, and the Respondent was so notified. Mr. Bennink subsequently by Order and Notice of July 24, 1992, recused himself as Hearing Officer in favor of Trustee, Thomas Varnes, who rescheduled the hearing to begin on Tuesday, September 8, 1992. Mr. Varnes subsequently recused himself in favor of Louis Williams who presided at the hearing which began on September 8, 1992, and took place on the dates of September 8, 9 and 28, 1992.

On February 16, 1993, the Hearing Officer issued a recommended Order, a copy of which is attached to and incorporated in this Order. The Hearing Officer concluded and recommended that the District Board of Trustees find that there exists good and sufficient reason for the dismissal of its employment of the Respondent, effective as of the end of his contracted employment for the College year 1991-1992, and for the cancellation of his continuing contract.

On March 9, 1993 at 5:00 P.M., after proper notice being given, a public hearing was held wherein the Board considered what action was to be taken on the Hearing Officer's Recommended Order. The entire Board was present which consisted of Frank Gafford, Louis Williams, Walter Skinner, Don Bennink, Norman Stephenson, A. Luther Harrell, Veda F. Dopson, Thomas Varnes, and Skipper Jones. All Board members

acknowledged they had reviewed the transcript of the Hearings and the Hearing Officer's Recommended Order.

Present as legal counsel for the Board was Attorney, Lloyd E. Peterson, Jr. President as Attorney for the Petitioner was Jesse S. Hogg of Hogg, Allen, Norton & Blue, P.A. Present as Attorney for Respondent was D. Grey Thomas of Sheppard and White, P.A.

After the hearing commenced Mr. Thomas, Attorney for the Respondent, presented to the Board a Motion for Disqualification. After hearing the arguments of both counsel, each individual member of the Board of Trustees with the exception of Frank Gafford who reserved ruling on his personal disqualification, stated on the record that they would not disqualify themselves concerning this matter.

The Board then turned to considering exceptions that had been filed by the

Respondent to the Hearing Officer's Recommended Order. The Exceptions and the decision regarding each is as follows:

Exception 1. Respondent excepts to the Hearing Officer's Recommended Order in that the Hearing Officer erred in refusing to disqualify himself upon Respondent's Motion for presiding in this cause.

Exception number one is denied. There is competent substantial evidence to support the actions, findings and conclusions of the Hearing Officer. Further, this exception is cumulative in that the argument has already been fully made as to the propriety of the Hearing Officer's refusal to disqualify himself.

Exception 2. Respondent excepts to the Hearing Officer's Recommended Order in that the members of the District Board of Trustees of Lake City Community College

erred in refusing to disqualify themselves in this cause.

Exception number two is denied. This exception is also cumulative in that on December 1, 1992, the Board members considered Respondent's Motion for Disqualification. At that time, each Board member with the exception of Frank Gafford who reserved ruling on his personal disqualification, declined to recuse themselves and such action was proper and complied with all essential requirements of the Law.

Exception 3. Respondent excepts to the Hearing Officer's Recommended Order in that the Hearing Officer erred in denying Respondent's Motion in limine and in that the Hearing Officer erred in recommending to the District Board of Trustees that Respondent's Motion to Dismiss Petition in Part be denied.

Exception number three is denied. The Hearing Officer outlined in great detail in his Recommend Order his reasons and rationale for denying Respondent's Motion in limine and for recommending to the Board that Respondent's Motion to Dismiss Petition in Part be denied, the same rationale and reasoning is herein adopted as ample cause to reject this exception.

Exception 4. Respondent excepts to the Hearing Officer's Recommended Order in that it erroneously sets forth facts and findings not supported by substantial and competent evidence.

Exception number four is denied. There is competent and substantial evidence to support all facts and Findings of Fact as made in the Hearing Officer's Recommended Order. Additionally, this exception is not properly framed in that it is worded so general that it cannot be read as

challenging any particular Findings of Fact. The burden is on the Respondent to word his exceptions so that the Board can reasonably tell which particular Finding of Fact the Respondent does not agree with and why. The Respondent has unreasonably placed an undue burden on the Board of reexamining the entire record to ascertain whether or not the general exception is valid. Clearly this should not be required.

Exception 5. Respondent excepts to the Hearing Officer's Recommended Order in that it erroneously sets forth Conclusions of Law that this proceeding has complied with all procedural and substantive legal requirements; that the Board may properly proceed against with regard to matters asserted by Sondra Sheppard DuBose, Amanda MacLaren, Angelia Viele, Julia Stone, and Rayanne Giddis; that dismissal of Respondent would not violate the due process

requirements of the Fourteenth Amendment to the United States Constitution; and that good and sufficient reasons exist for Respondent's dismissal as an employee of the District Board of Trustees and for cancellation of his continuing contract.

Exception number five is denied. This exception is over broad in that it attempts to deal with many issues under one exception. Be that as it may there is competent substantial evidence to support all of the actions, findings and conclusions which are found in the Hearing Officer's Recommended Order. Respondent has failed to demonstrate where or how the record supports the bear assertions of this exception. Further, he has offered no convincing legal or equitable argument for upholding this exception.

Exception 6. Respondent excepts to the Hearing Officer's Recommended Order in that

its Conclusions of Law allege incidents of misconduct by Respondent, which allegations are not supported by substantial competent evidence.

Exception number six is denied. There is competent and substantial evidence to support the Findings of Fact and the Conclusions of Law in the Hearing Officer's Recommended Order. The Respondent has failed to demonstrate how or why the allegations are not supported by substantial competent evidence.

Exception 7. Respondent excepts to the Hearing Officer's Recommended Order in that it erroneously recommends that the District Board of Trustees order the dismissal from employment and cancellation of the continuing contract of Respondent.

Exception number seven is denied. There is competent and substantial evidence to support the recommendation of the Hearing

Officer that the Board order the dismissal from employment and cancellation of the continuing contract. Respondent has again failed to show that the evidence does not demand anything other than the following the Hearing Officer's Recommendation.

Exception 8. Respondent hereby incorporates by reference all Motions and supporting arguments admitted in this proceeding by the Respondent as well as Respondent's Proposed Order in this matter in support of Respondent's exceptions to the Hearing Officer's Recommended Order.

Exception number eight is denied. This exception does not appear to be objecting to anything that was contained in the Hearing Officer's Recommended Order but instead attempts to supplement and support additional argument for upholding the Respondent's other exceptions.

Exception 9. Respondent excepts to the Hearing Officer's Recommended Order in that the Hearing Officer's Recommended Order is in all material respects identical to the proposed Order submitted by counsel for the Petitioner and reflects no consideration, or rationale for rejecting, the matters set forth in Respondent's Proposed Order.

Exception number nine is denied. There is no requirement that any rationale be given for rejecting Respondent's Proposed Order. This objection is irrelevant and immaterial since all Findings of Fact and Conclusions of Law and recommendations in the Hearing Officer's Recommended Order is supported by competent and substantial evidence.

In addition to the reasons given above for the denial of Respondent's Exceptions all of the exceptions are untimely in that they were not filed within twenty (20) days

of service of the Recommended Order to Respondent.

Afterwards the attorney for the Respondent, Mr. Thomas made two (2) oral Motions. The first was for leave to file exceptions if the Board deemed the exceptions that were presently before the Board were deemed to be filed late. This Motion is denied. The second Motion was to have the proposed Respondent's Findings of Fact and Conclusions of Law, which were earlier filed with the Hearing Officer, now considered as an Appendix and Exhibit incorporated by reference within the Respondent's Exceptions.

Board member, Frank Gafford, then during the discussion of whether to accept, reject or modify the Hearing Officer's Recommended Order, stated that he was now disqualifying himself from consideration of this matter.

The Board has reviewed the record in this case and finds that there is competent substantial evidence to support the Hearing Officer's Findings of Fact. The proceedings on which the Findings of Fact are based comply with the essential requirements of Law. Accordingly the Hearing Officer's Findings of Fact are adopted as the Board's factual findings. Further, the Board is in full accord with the Hearing Officer's discussion and analysis of the legal issues in this case and therefore adopts the Hearing Officer's analysis and recommended Conclusions of Law. In short, the Board herein adopts in its entirety the Hearing Officer's Recommended Order. Therefore, the Board find that there exists good and sufficient reason for the dismissal from its employment of Respondent, W. MICHAEL WRIGHT, effective as of the end of his contracted employment for the College year 1991-1992,

and for cancellation of his continuing contract.

IT IS SO ORDERED this 10th day of May, 1993.

/s/ Don Bennink
DON BENNINK, Chairman District Board of Trustees for Lake City Community College

BEFORE THE
DISTRICT BOARD OF TRUSTEES
LAKE CITY COMMUNITY COLLEGE

IN THE MATTER OF:

PRESIDENT'S RECOMMENDATION FOR DISMISSAL OF W. MICHAEL WRIGHT FROM EMPLOYMENT AT LAKE CITY COMMUNITY COLLEGE

MURIEL KAY HEIMER, as President of Lake City Community College,

Petitioner,

vs.

W. MICHAEL WRIGHT,

Respondent.

MOTION FOR DISQUALIFICATION

Respondent, W. Michael Wright, by and through undersigned counsel pursuant to the Constitution of the United States and the Constitution of the State of Florida, moves that all members of the District Board of Trustees of Lake City Community College be disqualified and recuse themselves in this

proceedings, and in support thereof, the respondent states:

1. Each member of the District Board of Trustees of Lake City Community College is a defendant in two civil actions brought by respondent and others against them in the United States District Court for the Middle District of Florida, Babb, et al. v. Lake City Community College, et al., Case No. 92-255-Civ-J-10 and Wright v. District Board of Trustees of Lake City Community College, et al., Case No. 92-752-Civ-J-10, and thereby are disqualified by reason of their interest in this proceeding and in the federal civil actions in which they are parties directly adverse to the respondent.

2. Petitioner admits in her President's Recommendation that respondent is under continuing contract with the District Board of Trustees as in instructor at Lake City Community College; accordingly,

respondent is vested with a property right jeopardized by this proceeding.

3. The Fourteenth Amendment to the Constitution of the United States prohibits any state from depriving any person of life, liberty or property without due process of law.

4. Article I, §9, of the Constitution of the State of Florida provides that no person shall be deprived of life, liberty or property without due process of law.

5. As a consequence of the foregoing, each member of the District Board of Trustees of Lake City Community College must be disqualified in this proceeding because any action to the contrary would deprive respondent of the fundamental fairness to which he is entitled pursuant to the Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States and

of Article I, §9 of the Constitution of the State of Florida.

WHEREFORE, respondent respectfully moves that each member of the District Board of Trustees be disqualified in this matter.

Respectfully submitted,

SHEPPARD AND WHITE, P.A.

/s/ Wm. J. Sheppard
Wm. J. Sheppard, Esquire
Florida Bar No.: 109154
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Jesse S. Hogg, Esquire**, 121 Majorca Avenue, Coral Gables, Florida 33134; and to **Lloyd E. Peterson, Jr., Esquire,** 101 E. Madison, P.O. Box 1653, Lake City, Florida 32056, by mail, this 8th day of March, 1993.

/s/ Wm. J. Sheppard
ATTORNEY

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
92 MAR 10 P1:29
Clerk, U.S. District Court
Middle District of Fla.
Jacksonville, Florida

TERRY A. BABB, WILLIAM DONALD HOLT, W. MICHAEL WRIGHT, and WILLIAM JACOBS,

Plaintiffs,

vs. Case No. 92-255-Civ-J-12

LAKE CITY COMMUNITY COLLEGE; Members of District Board of Trustees of Lake City Community College: DON BENNINK, JEAN DOWLING, LUTHER HARRELL, THOMAS RIHERD, NORMAN STEPHENSON, THOMAS VARNES, and LOUIS WILLIAMS, individually and in their official capacities; DR. MURIEL KAY HEIMER, President of Lake City Community College, individually and in her official capacity; DR. EUGENE STREET, Former Vice President for Instruction of Lake City Community College, individually; DR. DENNIS KING, Vice President for Student Support Services of Lake City Community College, individually and in his official capacity; KAREN BELCHER MASINGIL, Associate Vice President of Business Services of Lake City Community

College, individually, and in her official capacity; HOMER MASINGIL, Vice President of Business Services of Lake City Community College, individually, and in his official capacity; CAROLYN BOYD, former Director of Personnel of Lake City Community College, individually; DAVE PELHAM, Division Chairperson Arts and Science of Lake City Community College, individually and in his official capacity; SANDRA G. FISHER, Division Chairperson Business/Industrial Education of Lake City Community College, individually and in her official capacity; and DR. DAVID RICHARDS, former Division Chairperson Liberal Arts of Lake City Community College, individually; WILLIAM R. THRIFT, Division Chairperson of Criminal Justice of Lake City Community College, individually and in his official capacity,

Defendants.

COMPLAINT - JURY TRIAL DEMANDED

Plaintiffs, Terry A. Babb, William Donald Holt, W. Michael Wright, and William Jacobs, by and through their undersigned attorney, for their complaint, allege:

JURISDICTION

1. This action is brought for a declaratory judgment, injunctive relief, and damages pursuant to 42 U.S.C. §1983 and the First, Fifth and Fourteenth Amendments to the United States Constitution.

2. Jurisdiction is predicated upon 28 U.S.C. §§1331, 1343(3) & (4), 42 U.S.C. §1983, 28 U.S.C. §§2201(b) & 2202, and the First, Fifth and Fourteenth Amendments to the United States Constitution. These claims arose in the Middle District of Florida, and thus, venue is appropriate under 28 U.S.C. §1391(b).

3. This action seeks redress for the deprivation of plaintiffs' constitutional and civil rights, which rights are guaranteed by the First Amendment; the Due Process Clause of the Fifth Amendment, the Due Process and Equal Protection Clauses of

the Fourteenth Amendment to the Constitution of the United States.

PARTIES

4. Plaintiffs are all citizens of the United States and of the State of Florida. Plaintiffs Babb, Holt and Jacobs are terminated tenured faculty instructors at Lake City Community College. Plaintiff Wright is a transferred tenured faculty member. In 1972, plaintiffs commenced employment with defendant Lake City Community College, except plaintiff Wright who commenced employment in 1968. All plaintiffs had continuing contracts under the laws of the State of Florida as instructors at Lake City Community College at all times when the events complained of herein occurred.

5. Defendant Lake City Community College is a subdivision of the State of

Florida, operating under the authority of the state.

6. The individual defendants are citizens of the United States and of the State of Florida, and each is sui juris.

7. Defendants Don Bennink, Jean Dowling, Luther Harrell, Thomas Riherd, Norman Stephenson, Thomas Varnes, and Louis Williams, are and were members of District Board of Trustees, Lake City Community College at the times when the events complained of herein occurred. Each are sued in their individual and official capacities. These defendants caused the acts complained of herein to occur.

8. Dr. Muriel Kay Heimer is President of Lake City Community College. She is sued in her individual and official capacities. Defendant Heimer caused the acts complained of herein to occur.

9. Dr. Eugene Street is Former Vice President for Instruction, Lake City Community College. He is sued in his individual capacity. Defendant Street caused the acts complained of herein to occur.

10. Dr. Dennis King is Vice President for Student Support Services, Lake City Community College. He is sued in his individual and official capacities. Defendant King caused the acts complained of herein to occur.

11. Karen Belcher Masingil is the former Associate Vice President of Business Services, Lake City Community College. She is sued in her individual and official capacities. Defendant Masingil caused the acts complained of herein to occur.

12. Homer Masingil is Vice President of Business Services, Lake City Community College. He is sued in his individual and

official capacities. Defendant Masingil caused the acts complained of herein to occur.

13. Carolyn Boyd is the former Director of Personnel, Lake City Community College. She is sued in her individual capacity. Defendant Boyd caused the acts complained of herein to occur.

14. Dave Pelham is Division Chairperson of Arts and Sciences, Lake City Community College. He is sued in his individual and official capacities. Defendant Pelham caused the acts complained of herein to occur.

15. Sandra G. Fisher is Division Chairperson of Business/Industrial Education, Lake City Community College. She is sued in her individual and official capacities. Defendant Fisher caused the acts complained of herein to occur.

16. Dr. David Richards is former Division Chairperson of Liberal Arts, Lake City Community College. He is sued in his individual capacity. Defendant Richards caused the acts complained of herein to occur.

17. William R. Thrift is Division Chairperson of Criminal Justice, Lake City Community College. He is sued in his individual and official capacities. Defendant Thrift caused the acts complained of herein to occur.

18. All of the individual defendants have, at all times material herein, acted under color of law, custom and usage of the State of Florida.

FACTS

19. Plaintiffs Babb, Holt and Jacobs were hired by Lake City Community College in

1972 and plaintiff Wright was hired by Lake City Community College in 1968.

20. Lake City Community College, through the Board of Trustees of Lake City Community College, entered into continuing contracts with all plaintiffs. Plaintiff Wright entered into a continuing contract in 1971; Plaintiffs Jacobs and Holt entered into continuing contracts in 1975; and Plaintiff Babb entered into a continuing contract in 1976.

21. Lake City Community College administers its continuing contracts through the actions of the Board of Trustees of Lake City Community College.

22. As employees with continuing contracts of Lake City Community College, the plaintiffs were entitled to continued employment subject only to dismissal for cause.

23. In or about September or October, 1990, faculty employees, including plaintiffs, at Lake City Community College began to discuss forming a union.

24. In November, 1990, an organizing committee was formed and plaintiffs were members of the organizing committee.

25. In December, 1990, a majority of faculty employees, including plaintiffs, at Lake City Community College submitted union authorization cards that requested an election to determine bargaining rights. On December 19, 1990, said cards were sent to United Faculty of Florida, a labor union.

26. On February 11, 1991, the United Faculty of Florida filed a petition, pursuant to §447.307, Fla. Stat. (1989), and Florida Administrative Code Rule 38D-17.007, seeking to represent a unit of full-time instructors at Lake City Community College including plaintiffs.

27. All plaintiffs were active in organizing the effort to obtain cards. All plaintiffs signed cards and sought to be members of the unit of full-time instructors represented by United Faculty of Florida at Lake City Community College.

28. On March 7, 1991, defendant Heimer wrote plaintiffs that Lake City Community College had "found it necessary, for reasons relating to funding, to have a reduction in force for 1991-92 college year" and further stated: "Your name is on the list."

29. On March 12, 1991, defendants announced their intention to terminate plaintiffs which was reaffirmed in letters to plaintiffs from defendant Heimer dated March 21, 1991.

30. On May 14, 1991, plaintiff Wright was removed from the termination list by defendants but was reassigned out of his field due to his union activities.

31. All plaintiffs were expelled from the main campus of Lake City Community College due to their union activities.

32. In or about August, 1991, defendants terminated plaintiffs Babb, Holt and Jacobs due to their union activities.

33. The termination of plaintiffs by defendants was accomplished by a ranking system which took into account discipline of plaintiffs which had been imposed without he procedural protections required by law.

34. Plaintiffs' layoff because of reduction in force was merely a pretext to fire them without cause.

35. Within one year of the announced reduction in force Lake City Community College announced that it had a surplus of over one-half million dollars.

36. Plaintiffs were replaced by part-time instructors who are not eligible for continuing contracts. These part-time

employees are not as qualified as plaintiffs and many are unqualified. Some are relatives of some defendants.

37. Defendants' actions constituted an official governmental policy.

38. The rights of which plaintiffs were deprived are clearly established.

FIRST CAUSE OF ACTION

39. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1) through thirty-eight (38) and assert that plaintiffs Babb, Holt and Jacobs' termination and plaintiff Wright's transfer by defendants was a denial of their substantive due process rights because it was undertaken for improper motives and by means that were pretextual, arbitrary and capricious, and, unrelated to any proper reasons for layoff or transfer without any

rational basis, all in violation of the Fifth and Fourteenth Amendments.

SECOND CAUSE OF ACTION

40. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1) through thirty-eight (38) and assert that Plaintiffs Babb, Holt and Jacobs' and plaintiff Wright's transfer by defendants deprived these plaintiffs of their civil rights by failing to afford these plaintiffs of their civil rights by failing to afford these plaintiffs due process in regard to their right to be free from taint in their reputation, good name, honor and integrity, all in violation of the Fifth and Fourteenth Amendments.

THIRD CAUSE OF ACTION

41. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1)

through thirty-eight (38) and assert that plaintiffs Holt, Babb, and Jacobs' termination and plaintiff Wright's transfer by defendants deprived these plaintiffs of their civil rights by depriving them of their rights of speech and free association in violation of the First and Fourteenth Amendments.

FOURTH CAUSE OF ACTION

42. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1) through thirty-eight (38) and assert that plaintiffs Holt, Babb, and Jacobs' termination and plaintiff Wright's transfer by defendants deprived these plaintiffs of their civil rights by depriving them of their rights of speech and free association in violation of the Due Process Clause of the Fourteenth Amendment.

FIFTH CAUSE OF ACTION

43. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1) through thirty-eight (38) and assert that by plaintiffs Holt, Babb and Jacobs' termination and plaintiff Wright's transfer by defendants without stating a reason for cause, denied the plaintiffs the due process of law to which they are entitled under the Fifth and Fourteenth Amendments to the United States Constitution.

SIXTH CAUSE OF ACTION

44. Plaintiffs hereby reallege and incorporate by reference paragraphs one (1) through thirty-eight (38) and assert that plaintiffs Holt, Babb, and Jacobs' termination and plaintiff Wright's transfer by defendants without providing plaintiffs with notice that plaintiffs were entitled to a hearing prior to their employment being

terminated, the defendants denied the plaintiffs of the property interest in their jobs without the due process to which they are entitled, all in violation of the Fifth and Fourteenth Amendments.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. Issuance of permanent injunction;

(a) restraining defendants from terminating or transferring plaintiffs' employment without due process of law;

(b) ordering plaintiffs immediate reinstatement with full back pay and all other benefits and emoluments of their employment retroactive to August, 1991;

(c) ordering an immediate hearing to determine whether plaintiffs' terminations and transfer are unconstitutional; and

(d) ordering defendants, their agents and successors, to cease and desist from interfering with plaintiffs' liberty and property rights under the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

2. Entry of a judgment pursuant to 28 U.S.C. §2201, declaring that defendants, by their actions, have violated plaintiffs' constitutional rights. Order their immediate reinstatement as full-time tenured instructors with full compensation and benefits retroactive to August, 1991;

3. Award plaintiffs damages for injury to their professional reputations and reputations in their community, and interference with their right to pursue their chosen vocations as full-time tenured

instructors, together with costs and attorney's fees;

4. Award plaintiffs their reasonable attorney's fees in this cause;

5. Award plaintiffs their costs herein; and

6. Grant the plaintiffs all other proper relief.

DEMAND FOR JURY TRIAL

The plaintiff respectfully demands a jury trial on all issues so triable.

Respectfully submitted,

SHEPPARD AND WHITE, P.A.

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